

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAY 4 2000

PATRICK FISHER
Clerk

BO DON COX,

Petitioner - Appellant,

v.

STEPHEN KAISER; ATTORNEY
GENERAL OF THE STATE OF
OKLAHOMA,

Respondent - Appellee.

No. 99-7118

E.D. Okla.

(D.C. No. 98-CV-292-S)

ORDER AND JUDGMENT *

Before **BALDOCK** , **HENRY** , and **LUCERO** , Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for decision on the briefs without oral argument. See Fed. R. App. P. 34(f). The case is therefore submitted without oral argument.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Bo Don Cox appeals the district court's denial of his petition for a writ of habeas corpus under 28 U.S.C. § 2254. The district court denied his application for a certificate of appealability, see 28 U.S.C. § 2253(c)(2). We deny Mr. Cox's application for a certificate of appealability and dismiss his appeal.

In November 1986, Mr. Cox was convicted of first degree murder and sentenced to life imprisonment in Oklahoma state court. On June 19, 1998, Mr. Cox filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 claiming ineffective assistance of counsel, improper jury instructions and a deficient information.

The district court issued a thorough order denying the petition as untimely because of the one-year statute of limitations in 28 U.S.C. § 2244(d). The district court subsequently denied Mr. Cox's application for a certificate of appealability because he "failed to make a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

A petitioner may appeal the denial of a § 2254 petition only if "a circuit justice or judge" issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A). We have thoroughly reviewed Mr. Cox's application for a certificate of appealability, his brief, the district court's order, and the entire record before us. We conclude the Mr. Cox's habeas petition is untimely substantially for the reasons set forth in the district court's order dismissing his petition. Accordingly,

we DENY Mr. Cox's request for a certificate of appealability and DISMISS the appeal.

Entered for the Court,

Robert H. Henry
Circuit Judge